

#100018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/
Fenfluramine/Dexfenfluramine)
PRODUCTS LIABILITY LITIGATION

FILED

MDL DOCKET NO. 1203

THIS DOCUMENT RELATES TO ALL ACTIONS
MAR 16 1998

MICHAEL E. KUNZ, Clerk

By _____ Dep. Clerk
PRETRIAL ORDER NO. 19

Service of Complaints and Other Pleadings; Service List

1. Service of Complaints and Summonses

(A) Designation of Persons to Accept Service of Process. American Home Products Corporation, A.H. Robins, Inc., Interneuron Pharmaceuticals, Inc. and each of the Phentermine Defendants listed on the Rule 4 Schedule described below shall designate a person authorized to accept service of the Summons and Complaint in any newly filed case. Defendants have stipulated that service of process by certified mail upon such designated person shall be deemed proper service for the purposes of Fed.R.Civ.P. 4.

(B) Rule 4 Schedule. Within 15 days of the entry of this Order, Defendants' Liaison Counsel shall file with the Court and serve on the Plaintiffs' Liaison Counsel a Schedule of the persons designated pursuant to paragraph 1(A) ("Rule 4 Schedule"). The designations set forth in the Rule 4 Schedule shall be effective immediately upon filing and service thereof upon Plaintiffs' Liaison Counsel.

(C) Changes to Rule 4 Schedule. If a party at any time wishes to change the designation made pursuant paragraph 1(B), such party shall notify their Liaison Counsel. Within

15 days of notice of the revised designation, Defendants' Liaison Counsel shall file with the Court and serve on Plaintiffs' Liaison Counsel a revised Rule 4 Schedule, and such revision shall be effective 15 days after filing and service of the revised Rule 4 Schedule upon Plaintiffs' Liaison Counsel.

(D) **Time Period for Service of Process.** For those civil actions that were originally filed in or transferred to and docketed in the Eastern District of Pennsylvania before April 1, 1998, plaintiffs shall make service of their Complaint and a Summons on each defendant named therein no later than May 1, 1998. For all civil actions that were originally filed in or transferred and docketed in the Eastern District of Pennsylvania after April 1, 1998, plaintiffs shall serve their Complaint and a Summons on each defendant not served previously no later than 30 days after the date on which their action is docketed in the Eastern District of Pennsylvania. Nothing here is intended to enlarge the time for service of Complaints and Summonses which is provided for in *Fed.R.Civ.P.* 4(m).

(E) **Service of Process on Foreign Defendants.** The preceding paragraph shall not apply to service on a foreign defendant to the extent that service on such a defendant is required under the provisions of the Hague Convention.

2. **Service List; Service of Other Documents**

(A) **Contents of the Service List**

The Service List shall contain the name, address, and telephone number of one (1) attorney (or in the case of a pro se party, a person) who will be deemed to be the person upon whom valid service is to be made by any other party under Federal Rule of Civil Procedure 5.

(B) **Special Master**

It is contemplated that the Court will appoint a Special Master with respect to discovery and other matters pursuant to *Fed.R.Civ.P.* 53 (hereinafter "the Special Master").

(C) Preparation, Administration and Filing of the Service List

The Special Master appointed by the court shall prepare and administer the Service List. Each Service List and any supplement thereto which is prepared pursuant to this Order shall be filed of record with the Clerk on the docket applicable to all actions in MDL 1203.

(D)) Title of Service List and Designation of Dates Covered by the List

The Service List shall be entitled "MDL 1203 -- Diet Drug Litigation -- Service List." The Service List heading shall also state: "This Service List shall govern all service made under Federal Rule of Civil Procedure 5 for the period _____ to _____, inclusive." The Service List shall be filed on or before the first of each month. Therefore, the Service List dates to be filled in will be the first and last day of each month covered by that list.

Any Supplements to the Service List as provided for in Paragraph 2(F) of this Order, shall be identified as a "Supplement" to a previously existing Service List and shall likewise show the dates being the first and last day of the month to which the Supplement applies.

(E) Changes to the Service List

Any party desiring to make a change in the Service List shall notify the Special Master in writing at least fifteen (15) days before the month that the change is to be published in the Service List or a Supplement thereto. All parties can rely upon, and will be deemed to be bound by, the contents of any Service List or Supplement, and for these purposes, no change in status concerning service under Federal Rule of Civil Procedure 5 will be considered to have taken effect until the change is published in the Service List or a Supplement in accordance with the provisions of this section.

(F) Procedure for Filing of the Service List and Any Changes

If at the time the Special Master receives any written notice of proposed changes in accordance with Paragraph 2(E) above, it is determined by the Special Master that the changes

are not so numerous as to warrant reprinting of the entire Service List for the next succeeding month, the Special Master may simply file a "Supplement to the Service List" which will be filed prior to, and be effective the first of, the succeeding month. The Supplement will itemize the changes and note in its heading that the Service List for the month covered by the Supplement will consist of the Supplement or Supplements identified and which contain the necessary changes to the last identified full Service List filed by the Special Master.

At such time as the Special Master believes that a number of Supplements warrant the preparation of a new full Service List, the Special Master shall cause the same to be prepared and filed on or before the first of the next succeeding month. Under any circumstance, however, a full Service List shall be published at least once every six (6) months and shall contain all of the changes from previous Supplements.

(F) Use of the Service List

1. Court Orders

(a) Defendants' Liaison Counsel shall be responsible for serving upon each member of their group, all Orders signed by the court.

(b) The Plaintiffs' Management Committee is responsible for serving all Orders signed by the court to all plaintiffs' counsel and plaintiffs who are unrepresented.

2. Motions, Briefs, and Any Other Papers Required To Be Served Under Federal Rule of Civil Procedure 5.

(a) Except as provided below, the moving party or party who is required to serve any document shall be responsible for serving the document upon all persons or other parties required to be served under Federal Rule of Civil Procedure 5, or other provision of law including any court Order expressly requiring that service be made in a particular circumstance.

(b) Regardless of any other provisions governing service, all documents filed in any action in MDL 1203 shall be served on all liaison counsel, each Co-Chairman of the Plaintiffs' Management Committee, and on the office of the Plaintiffs' Management Committee which is presently located at 414 Walnut Street, Philadelphia, Pennsylvania 19106.

(c) In any filing relating to an individual action or group of individual actions, service shall be made on each party of record in each such action as reflected on the service list in addition to those persons on whom service is required by paragraph 2(F)(2)(b) of this Order.

(d) With respect to documents filed by defendants which apply to all actions in MDL 1203, it shall be sufficient to serve all Liaison Counsel, each Co-Chairman of the Plaintiffs' Management Committee, and the office of Plaintiffs' Management Committee. Plaintiffs' Management Committee shall not be required to serve such documents on all plaintiffs. However, at least twice a month Plaintiffs' Liaison counsel shall prepare a list of all documents which have been filed and served by defendants in MDL 1203 during the period following the date of the last such list and shall furnish a copy of the list to one attorney for each plaintiff separately represented. On request, the PMC shall furnish copies of any of the documents reflected on such lists to a plaintiff at a price not to exceed the per page rate charged by the Clerk of Court for making copies of publicly filed documents which is in effect at the time of the request. The PMC may, at its election, require that copying charges be paid in advance.

(e) Any motion filed on behalf of any plaintiff shall be filed through the PMC with the endorsement of one or more of the co-chairs of the PMC attesting to the fact that the motion satisfies all applicable requirements of the Court. Any such endorsement shall not constitute a representation or affirmation with respect to the substance or merit of any such motion.

(G) Disputes Regarding Content of Service List

All Disputes regarding the service list shall promptly be brought to the attention of the court for resolution.

(H) Certificates of Service

When service of pleading, motion, brief, or other document is made, it shall be sufficient to attach a Certificate of service to any such document stating that the document has been served on the persons entitled to be served as shown on the service list in effect on the date service was made. This certificate will allow any person to determine the identity of the persons served in regard to any pleading, motion, brief or other document. Therefore, no party making service should attach to their paper a list of all of the names, addresses and phone numbers of persons served. Reference in the Certificate of Service to the service list will reduce the substantial burdens associated with the parties reproducing and attaching voluminous lists of names, addresses and phone numbers that are already of record and easily accessible on the service list in the Clerk's Office.

Any need to certify service in another manner shall only be permitted by separate Court Order, for cause shown. Further, the Clerk of Court is directed to reject for filing any document that does not comply with this procedure and that has as its Certificate of Service a list of all individuals served.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Louis C. Bechtle', written over a horizontal line.

Louis C. Bechtle,
Chief Judge Emeritus

Dated: _____